

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10081 of 2000

with

SPECIAL CIVIL APPLICATION No 10290 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.H.WAGHELA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : YES
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO
1 & 2 YES; 3 to 5 NO

BHARTIYA KARMACHARI SANGH

Versus

OIL & NATURAL GAS CORPORATION LTD.

Appearance:

MR DIPAK R DAVE for Petitioner
MR RAJNI H MEHTA for Respondent No. 1
SERVED BY RPAD - (N) for Respondent No. 2
NOTICE SERVED BY DS for Respondent No. 4

CORAM : MR.JUSTICE D.H.WAGHELA

Date of decision: 20/10/2000

C.A.V. ORAL JUDGEMENT

1. These petitions having been filed against the same respondents involving the same issues, they are heard and disposed together by this common order.

2. Special Civil Application No.10081 of 2000 is filed by a trade union on behalf of its members numbering 21 and praying for them the relief of absorption in service on regular and permanent basis by the respondent No.1 as the principal employer (ONGC for short). The employees concerned are admittedly employed by respondent No.2-contractor since various dates of joining in late 1997 to April, 2000. Although they are appointed as "plant assistants" by the contractor, the work of helpers is taken from them under the control and supervision of ONGC through the contractor so as not to make them permanent and regular employees, according to the petition. It is averred that the activity of maintaining the effluent treatment plant (ETP) is a statutory requirement and of a perennial nature and the employment of contract labour for the work of helpers is prohibited by the Notification dated 8.9.1994 issued by the Government of India. Thus, a case is sought to be made out that the contract is sham and bogus and the employees concerned are discriminated by the ONGC in the matter of wages and benefits and, upon their demand of permanent status and absorption, the service of the employees may be terminated, and hence, they should be protected by an interim order. By an affidavit-in-reply, ONGC has strongly objected against grant of any interim relief and generally denied all the allegations against it. According to ONGC, the ETP was installed in 1997 and contracts were awarded from time to time for its running and maintenance after inviting bids. The respondent No.2-contractor was awarded the contract from 15.10.1999 and the same was extended upto 14.10.2000 as per the terms. It is averred that as adequate manpower is inducted by following the recruitment procedure for operation and maintenance of ETP, now there is no necessity of entering into any contract and continuance of contract labour in the ONGC would amount to back-door entry against the recruitment rules of ONGC. Thus, it is denied that there ever existed any employer-employee relationship between ONGC and the contract labourers concerned. It is categorically denied that the employment of contract labour for operation and maintenance of ETP was prohibited by the notification issued by the Central Government under the Contract Labour (Regulation and Abolition) Act, 1970 ("the Act" for short). By a further affidavit-in-reply, ONGC has stated that some of the employees concerned were, in fact, appointed as technicians and that the contractor

would be shifting their employees to their other installations upon cessation of the contract with ONGC. By way of an affidavit-in-rejoinder filed by the petitioners, it is stated that even if the employees concerned were taken to be "plant assistants" or "technicians", they are falling within the prohibited category and in absence of denial by the contractor, the contract is required to be treated as sham and bogus and the workmen cannot be denied their rights just by the imminent abrupt termination of the contract and hence the court ought to intervene.

3. In Special Civil Application No.10290 of 2000, it is the case of the petitioners that all the conditions laid down by Section 10 of the Act for prohibition of employment of contract labour have been satisfied in the matter of petitioners' employment and, therefore, they were entitled to the relief of absorption as the direct employees of ONGC. The petitioners are, admittedly, designated as chemists and their dates of joining the service under the contractor are 11.11.1999, 1.5.2000 and 14.6.2000. A copy of the "work order for hiring of service contract for operation and maintenance of E.T.P. at C.P.F., Gandhar" dated 8.10.1999 is annexed with the petition, wherein the contract value, duration of the contract, performance bond, agreement etc. are mentioned besides a stipulation as under:

"6. You have to deploy all the personnel for carrying out the required jobs under scope of work strictly as per Annexure-II and III alongwith their Biodata".

In Annexures-II and III, the minimum manpower required for operation and maintenance of effluent treatment plant and the essential qualification and experience required for the personnel are mentioned. Under the column "Category" are mentioned Chemist, Technician (P), Technician (M), Technician (E) and Plant Assistant.

4. The essential relevant facts that emerge from the record as above are that the employees arrayed on the petitioners' side are neither helpers nor employees of ONGC. The contract is mainly and substantially a contract for rendering comprehensive service and the employees are paid and employed by the contractor. The plea that the contract is sham or bogus is in no way borne out by any evidence. And the employees have nowhere even made a representation, either for their absorption or for abolition or prohibition of employment of contract labour or for raising an industrial dispute. Thus, the petitions are an attempt at direct absorption of the employees in ONGC with a prayer for continuance of

their service by way of an interim relief when the contract for service with the contractor is about to come to an end.

5. The learned counsel for the petitioners have relied upon several judgments wherein, in the facts and circumstances of the case, protection by way of interim relief is granted either pending conciliation proceedings or with a view to enable the employees to approach the Conciliation Officer. The observations of the Hon'ble Supreme Court in ALL INDIA GENERAL MAZDOOR TRADE UNION v. DELHI ADMINISTRATION [1995 Suppl (3) SCC 579] are pressed into service to submit that while the questions raised by the workmen can be resolved, they must be continued in employment or otherwise the entire grievance would be rendered infructuous and redundant. It must be noted that, in the same order, it is observed, after referring to Section 10 of the Act, that the question that arose for consideration was whether the requirements for issuance of a notification under Section 10 of the Act have been satisfied. It is further observed that:

"We think that in such cases it is appropriate that the authority established under the statute is approached first in point of time so that it is in a position to collect and collate the data and place it in the correct perspective for decision making and if despite a case having been made out, the appropriate Government does not exercise power, the aggrieved workers can certainly move the appropriate forum for writ of mandamus."

Thus, in that case, the Supreme Court was approached for a writ in the nature of a writ of mandamus to command the appropriate Government to issue a notification under Section 10 of the Act.

6. The petitioners also relied upon the judgment of this Court in SURAT (HAZIRA) KAMDAR KARMCHARI UNION v. STATE OF GUJARAT [1999 (2) GLR 1776] where all the petitioners principally sought abolition of contract labour system in a company and for that a direction against the State was sought for a reference to the State Advisory Contract Labour Board constituted under the Act. In that case, interim protection was granted to the workmen concerned while issuing notices to the respondents and during the pendency of the petitions a reference was made to the above-referred Board and the substantial purpose of filing of the petition had come to be served. The end-result of the efforts of the

petitioners, if they succeeded in the reference, was that the contractor would have stood removed and direct relationship would have been created between the principal employer and the workmen in view of the judgment in AIR INDIA STATUTORY CORPORATION v. UNITED LABOUR UNION [AIR 1997 SC 645]. Thus, the question was in respect of the interregnum and, in that context, a detailed arrangement for continuation of the interim protection was made. It may be apposite to note that despite the submission that "an interim relief can be granted only in aid of and as ancillary to the main relief which may be available to the party on final determination of his rights in suit or proceedings", continuance of the interim relief was held to be just and necessary and reliance was placed on the following observations of the Supreme Court in AIR INDIA STATUTORY CORPORATION's case (case):

"The founding fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution except self-imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Court as sentinel in the *qui vive* is to mete out justice in given facts. On finding that either the workmen were engaged in violation of the provisions of the Act or were continued as contract labour, despite prohibition of the contract labour under Section 10 (1), the High Court has, by judicial review as the basic structure, constitutional duty to enforce the law by appropriate directions." (emphasis supplied).

As a part of the consequential arrangement in the said judgment of this Court, it was ordered that the employees would continue to have a lien on their position under the principal employer in the event the entire activity was not required by the principal employer. Emphasis was laid on behalf of the petitioners on this part of the order.

7. The observations of the Hon'ble Supreme Court in a Full Bench decision in HUSSAINBHAI v. THE ALATH FACTORY TEZHILALI UNION [AIR 1978 SC 1410] made in the context of challenge to an award made on a reference were also relied. In the same judgment, however, the note of caution is sounded as under:

"Of course, if there is total dissociation in fact between the disowning management and the aggrieved workmen, the employment is, in

substance and real-life terms, by another. The management's adventitious connections cannot ripen into real employment." "

Thus, after referring to the ratio of the celebrated judgment of the Supreme Court in AIR INDIA STATUTORY CORPORATION (supra), it was contended on behalf of the petitioners that after abolition of contract labour system, the workmen were entitled to regularisation under the principal employer as a matter of right. This contention is obviously based upon the premise and presumption that employment of contract labour was prohibited in the various categories of works by the Notification dated 8.9.1994 and those categories or works covered the employees concerned in these petitions.

8. As noted earlier, in the facts of the present cases, the contract between ONGC and the contractor is neither established to be sham or bogus nor just an arrangement for employing the workmen. The categories of the workmen concerned are also not established to be covered by the Notification dated 8.9.1994. And there is no question of the contractor standing removed upon abolition or prohibition of the employment of contract labour in the establishment of ONGC as the contract came into being five years' after the said Notification. The petitioners have taken no steps either for prohibition of employment of contract labour or to raise an industrial dispute demanding appropriate relief. The petitions are raising disputed questions of fact and the main relief of a writ in the nature of mandamus directing the ONGC to absorb the employees concerned as permanent employees cannot be directly granted in the facts and circumstances discussed hereinabove. This Court would not, in exercise of its extraordinary jurisdiction under Article 226 of the Constitution, interject at a critical stage when the contract between the principal employer and the contractor is coming to an end and when the employees approach it with the prayer for continuation of their employment without any foundation in facts and purely on the basis of abstract legal principles and precedents cited out of their context. As observed by the Hon'ble Supreme Court in AIR INDIA STATUTORY CORPORATION (supra) the finding that the workmen were engaged in violation of the provisions of the Act or were continued as contract labourers despite prohibition of the contract labour under Section 10 (1), is necessary before the High Court may discharge its constitutional duty of enforcing law by appropriate directions. In the facts of the present cases, the prayers are based upon the premises that the work and the category of the employees concerned are

covered by the Notification dated 8.9.1994 under the Act and that the contract between the principal employer and the contractor is continuing. Both these premises are ill-founded. As seen earlier, the contract is ending on 14.10.2000 and the workmen concerned are supposed to be shifted, after their stint at the ONGC, to other plants under the contractor. The principal employer proposes to man the ETP by its own regularly recruited work-force. Under such circumstances, the main relief of absorption would not be available to the petitioners in these petitions. And a petition cannot be entertained only for the grant of interim relief when the main relief cannot be granted to the petitioner.

9. In the result, in the facts and for the reasons discussed hereinabove, the petitions are dismissed as misconceived and without substance. The request for an order protecting the service of the workmen under the ONGC by way of ad-interim relief to allow the petitioners to prefer an appeal from this order is rejected.

Sd/-

(D.H.Waghela, J.)

KMG Thilake